

Homestead Exemption
Duplex Unit

In re Jonathan and Christina Louthan

BR Case # 698-64823-fra7
Dist. Ct. # 99-6080-HO

7/20/99

District Ct. (Hogan) aff'g Unpublished
order by Judge Alley

Debtors purchased a duplex and rent out one unit while living in the other unit. The entire property is valued at \$125,000 and is subject to a secured debt of \$102,000 for a net equity of \$23,000. The debtors claim the homestead exemption for the entire equity. The trustee objected to the claimed exemption, arguing that only the value of the unit in which the debtors reside is subject to the exemption. The Bankruptcy Court overruled the trustee's objection and the trustee appealed.

The District Court agreed with the Bankruptcy Court that Oregon case law as found at In re Potter's Estate, 154 Or. 167, 177 (1936) is the current statement of the law in the state of Oregon regarding the homestead exemption. That case held that a building in which a homestead claimant resides and the land upon which it is situated does not lose its character as a homestead merely because the building contains other apartments which are rented to tenants.

E99-19(5)

There is no underlying written opinion of
the Bankruptcy Court.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re
JONATHAN L. LOUTHAN,
CHRISTINA M. LOUTHAN,

Debtors.

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)
)
) Case No. 99-6080-HO
) BR No. 698-64823-fra7
)
) ORDER
)

This is an appeal of the United States bankruptcy court's order overruling the trustee's objection to the debtors' claim of homestead.

This court has jurisdiction to hear appeals from final judgments and orders of the Bankruptcy Court for the District of Oregon pursuant to 28 U.S.C. §158(a)(1) unless all parties consent to the jurisdiction of the Bankruptcy Appellate Panel(BAP). In the instant case, the Chapter 7 trustee has filed a timely objection to consideration by the BAP.

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Background

The background facts are not in dispute. Debtor, Jonathan Louthan purchased a duplex unit¹ five years ago with the purpose of living within one unit and renting out the adjacent unit as an investment property. (Appellant's brief pp.2-3; Appellee's brief p.1; excerpt of the record p.18). Debtors are currently residing in the three bedroom unit and through a property management company, are renting the two bedroom unit to a unrelated tenant. (Excerpt of record pp. 16-18).

The apportioned value of the property is 60/40, with debtors' residence at 2925 Byram having the greater value. (Appellant brief p.3). The value for the entire property is scheduled at \$125,000.00 and is subject to a secured debt of \$102,000.00, for a net equity of \$23,000.00. Id. Debtor claims a homestead exemption in the amount of \$23,000.00, pursuant to ORS 23.240 and 23.250. Id.

Discussion

The issue before this court is whether the full value of the property is subject to the Oregon homestead exemption or if, as the trustee contends, the 40% equity value of the rental unit (approximately \$9,200.00) is excluded.

The trustee argues that since ORS 23.240 includes the phrase

¹ The duplex is sited on a corner lot in Salem, Oregon and consists of debtors' residence at 2935 Bryam St. and a rental unit at 3290 Starr Court.

"except as provided by law", the homestead exemption statute should be read to include the definition and qualifying language of ORS 311.666(2); Oregon law dealing with collection of property taxes. (Appellant's brief p.4). The trustee contends that this language provides "some enlightenment of legislative intent" regarding the definition of homestead as it applies to multi-unit dwellings. Id.

The debtor argues that ORS 311.666(2) is not a basis for reducing or limiting his homestead exemption amount since it evinces legislative intent to expand rather than limit homestead rights by allowing low income and senior citizens to stay in their homes and defer unpaid taxes. (Appellant brief pp.2-3). Debtor argues that both ORS 23.240 and ORS 311.666 are drafted to enable homestead owners to stay in their homes or alternatively to give them \$25,000.00 for another home. Id.

On April 26, 1999, ORS 23.240 was amended. Or Legis 135 (1999). The amended version of the statute states:

"A homestead shall be exempt . . . from liability in any form for the debts of the owner to the amount in value of \$25,000, except as otherwise provided by law.

The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child. . . ."

ORS 23.240 (1999).

If the legislature wanted to amend the homestead exemption statute to include language from ORS 311.666 regarding multi-unit

dwelling surely, that would have been the time to do so. Instead, a homestead is defined as property located in a town or city not exceeding one block, provided the claim does not exceed \$25,000². ORS 23.250.

The statute governing enforcement of judgments³, unlike the statute governing the deferred collection of homestead taxes⁴, contains no language limiting a homestead claim solely to that portion of the building actually used as the debtor's principal dwelling. The trustee's concern that the bankruptcy judge's position regarding the homestead exemption would lead to allowing a homestead claim on a 100-unit apartment dwelling in which a bankrupt debtor resided is not an issue currently before this court. Debtor's \$23,000.00 claim is here limited to a duplex which he and his wife use in part, as their principal dwelling and in part, as income producing rental property.

Oregon case law has long interpreted the homestead statutory scheme to mean that "if a building, which is the actual abode of the homestead claimant, contains other apartments which are rented to tenants, that fact does not destroy the character of the building or the ground upon which it is located as a

² Or, if the property is jointly owned, \$33,000. In other words, whichever amount is applicable under ORS 23.240(1).

³ ORS 23.240; ORS 23.250.

⁴ ORS 311.66; ORS 311.668.

homestead." In re Potter's Estate, 154 Or. 167, 177 (1936). The Bankruptcy Judge correctly held that this is a current statement of the law in the state of Oregon.


Indeed, Oregon courts liberally construe homestead laws to the end that the beneficent purposes of this remedial legislation be accomplished. In re Laughlin's Estate, 170 Or. 450, 454 (1943) (It is the policy of the law to preserve a home . . . sheltered beyond the reach of urgent creditors or economic misfortune.) Thus, Oregon courts have variously held that the stability and welfare of the state demands the preservation of the home. Id. at 455; see also Smith v. Kay, 153 Or. 80 (1936); Moodv v. Baker, 142 Or. 559 (1933); Banfield v. Schulderman, 137 Or. 167 (1931). Therefore, Oregon law supports the bankruptcy court's finding that the full value of the property is subject to the Oregon homestead exemption and the debtor's claim of \$23,000.00 is appropriate.

Conclusion

For the above mentioned reasons the decision of the United States Bankruptcy Court for the District of Oregon is AFFIRMED and the trustee's appeal is DENIED.

IT IS SO ORDERED.

Dated this 20th day of July, 1999.


UNITED STATES DISTRICT JUDGE

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CLERK OF DISTRICT COURT

BY *[Signature]*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re
JONATHAN L LOUTHAN
CHRISTINA M LOUTHAN

Debtors.

Civil No. 99-6080-HO

JUDGMENT

The decision of the United States Bankruptcy Court is affirmed and the trustee's appeal is denied.

Dated: July 21, 1999.

Donald M. Cinnamond, Clerk

by *[Signature]*

Lea Force, Deputy

JUDGMENT

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